

## Bureau of Land Management, Interior

## § 3461.2-1

stipulated methods of coal mining involving surface coal mining operations, as defined in § 3400.0-5(mm) of this title.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33148, July 30, 1982]

### § 3461.1 Underground mining exemption from criteria.

(a) Federal lands with coal deposits that would be mined by underground mining methods shall not be assessed as unsuitable where there would be no surface coal mining operations, as defined in § 3400.0-5 of this title, on any lease, if issued.

(b) Where underground mining will include surface operations and surface impacts on Federal lands to which a criterion applies, the lands shall be assessed as unsuitable unless the surface management agency finds that a relevant exception or exemption applies.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33149, July 30, 1982. Redesignated at 52 FR 46473, Dec. 8, 1987]

### § 3461.2 Unsuitability assessment procedures.

#### § 3461.2-1 Assessment and land use planning.

(a)(1) Each of the unsuitability criteria shall be applied to all coal lands with development potential identified in the comprehensive land use plan or land use analysis. For areas where 1 or more unsuitability conditions are found and for which the authorized officer of the surface management agency could otherwise regard coal mining as a likely use, the exceptions and exemptions for each criterion may be applied.

(2) Public comments on the application of the unsuitability criteria shall be solicited by a notice published in the FEDERAL REGISTER. This call for comments may be part of the call for public comments on the draft land-use plan or land-use analysis. This notice shall announce the availability of maps and other information describing the results of the application and the application process used.

(3) The authorized officer of the surface management agency shall describe in the comprehensive land use plan or land use analysis the results of the application of each unsuitability cri-

terion, exception and exemption. The authorized officer of the surface management agency shall state in the plan or analysis those areas which could be leased only subject to conditions or stipulations to conform to the application of the criteria or exceptions. Such areas may ultimately be leased provided that these conditions or stipulations are contained in the lease.

(b)(1) The authorized officer shall make his/her assessment on the best available data that can be obtained given the time and resources available to prepare the plan. The comprehensive land use plan or land use analysis shall include an indication of the adequacy and reliability of the data involved. Where either a criterion or exception (when under paragraph (a) of this section the authorized officer decides that application of an exception is appropriate) cannot be applied during the land use planning process because of inadequate or unreliable data, the plan or analysis shall discuss the reasons therefor and disclose when the data needed to make an assessment with reasonable certainty would be generated. In the case of Criterion 19, application shall be made before approval of the mining permit. In the case of other deferred criteria, application shall be made prior to finalizing the environmental analysis for the area being studied for coal leasing. The authorized officer shall make every effort within the time and resources available to collect adequate and reliable data which would permit the application of Criterion 19 in the land use or activity planning process. When those data are obtained, the authorized officer shall make public his/her assessment on the application of the criterion or, if appropriate, the exception and the reasons therefor and allow opportunity for public comment on the adequacy of the application as required by paragraph (a)(2) of this section.

(2) No lease tract shall be analyzed in a final regional lease sale environmental impact statement prepared under § 3420.4-5 of this title without significant data material to the application to the tract of each criterion described in § 3461.1 of this title, except, where necessary, criterion 19. If the data are lacking for the application of

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a criterion or exception to only a portion of the tract, and if the authorized officer determines that it is likely that stipulations in the lease or permit to conduct surface coal mining operations could avoid any problems which may result from subsequent application of the criterion or exception, such tract may be included and analyzed in the regional lease sale environmental impact statement.

(c) Any unsuitability assessments which result either from a designation or a termination of a designation of Federal lands as unsuitable by the Office of Surface Mining Reclamation and Enforcement, or from changes warranted by additional data acquired in the activity planning process, may be made without formally revising or amending the comprehensive land use plan or analysis.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33149, July 30, 1982; 51 FR 18888, May 23, 1986. Redesignated and amended at 52 FR 46473, Dec. 8, 1987]

## **§ 3461.2-2 Consultation on unsuitability assessments.**

(a) Prior to adopting a comprehensive land use plan or land use analysis which assesses Federal lands as unsuitable for coal mining, the Secretary or other surface management agency shall complete the consultation set out in §§ 3420.1-6 and 3420.1-7 of this title.

(b) When consultation or concurrence is required in the application of any criterion or exception in § 3461.1 of this title, the request for advice or concurrence, and the reply thereto, shall be in writing. Unless another period is provided by law, the authorized officer shall specify that the requested advice, concurrence or nonconcurrence be made within 30 days.

(c) When the authorized officer does not receive a response either to a request for concurrence which is required by this subpart but not by law, or to consultation within the specified time, he or she may proceed as though concurrence had been given or consultation had occurred.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33149, July 30, 1982. Redesignated at 52 FR 46473, Dec. 8, 1987]

## **43 CFR Ch. II (10-1-08 Edition)**

### **§ 3461.3 Relationship of leasing to unsuitability assessment.**

#### **§ 3461.3-1 Application of criteria on unleased lands.**

(a) The unsuitability criteria shall only be applied, prior to lease issuance, to all lands leased after July 19, 1979.

(b) The unsuitability criteria shall be initially applied either:

(1) During land use planning or the environmental assessment conducted for a specific lease application; or

(2) During land use planning under the provisions of § 3420.1-4 of this title.

[47 FR 33149, July 30, 1982. Redesignated at 52 FR 46473, Dec. 8, 1987]

#### **§ 3461.3-2 Application of criteria on leased lands.**

The unsuitability criteria shall not be applied to leased lands.

[47 FR 33149, July 30, 1982. Redesignated at 52 FR 46473, Dec. 8, 1987]

### **§ 3461.4 Exploration.**

(a) Assessment of any area as unsuitable for all or certain stipulated methods of coal mining operations pursuant to section 522 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272) and the regulations of this subpart does not prohibit exploration of such area under subpart 3410 and Part 3480 of this title.

(b) An application for an exploration license on any lands assessed as unsuitable for all or certain stipulated methods of coal mining shall be reviewed by the Bureau of Land Management to ensure that exploration does not harm any value for which the area has been assessed as unsuitable.

[44 FR 42638, July 19, 1979. Redesignated and amended at 47 FR 33149, July 30, 1982; 50 FR 8627, Mar. 4, 1985. Further redesignated at 52 FR 46473, Dec. 8, 1987]

### **§ 3461.5 Criteria for assessing lands unsuitable for all or certain stipulated methods of coal mining.**

(a)(1) *Criterion Number 1.* All Federal lands included in the following land systems or categories shall be considered unsuitable: National Park System, National Wildlife Refuge System, National System of Trails, National